

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION

Edwin Sylvain,)	Case No. 5:22-cv-04672-DCC
)	
Petitioner,)	
)	
v.)	ORDER
)	
Warden Janson,)	
)	
Respondent.)	
_____)	

Petitioner, proceeding pro se, is seeking habeas corpus relief pursuant to 28 U.S.C. § 2241. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2), (D.S.C.), this matter was referred to United States Magistrate Judge Kaymani D. West for pre-trial proceedings and a Report and Recommendation (“Report”). On February 13, 2023, Petitioner filed a motion to dismiss and, in the alternative, a reduction in sentence due to saving officer life. ECF No. 18. Respondent filed a response in opposition. ECF No. 30. Petitioner filed additional attachments to his motion and a reply.¹ ECF Nos. 32, 35. On June 28, 2023, the Magistrate Judge issued a Report recommending that it be granted, that Petitioner’s motion be denied. ECF No. 38. Petitioner did not file objections to the Report but did file a motion for successive transfer. ECF No. 40.

¹ The Report does not specifically mention the additional attachments but they are cited on the second page.

APPLICABLE LAW

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. See *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a de novo determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b). The Court will review the Report only for clear error in the absence of an objection. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” (citation omitted)).

ANALYSIS

As an initial matter, the Court finds that the Magistrate Judge has included a thorough summary of the relevant facts and applicable law, which the undersigned incorporates by reference. The Court also notes that there is a pending motion to dismiss filed by Respondent, which has been fully briefed and is not the subject of the Magistrate Judge's Report or this Order.

The Magistrate Judge recommends denying Petitioner's motion to dismiss because this motion addresses the same arguments raised in Respondent's pending

motion to dismiss and ruling on them here would be premature and duplicative. With respect to the motion to reduce sentence, the Magistrate Judge determined that this Court lacks jurisdiction to consider the request.

As noted above, Petitioner did not file objections but did file a motion for successive transfer in which he requests “this honorable court to transfer his petition to the 11th circuit district court or in the alternative vacate his 924(c) conviction in count 5.” ECF No. 40 at 3. To the extent Petitioner intended this document to serve as objections to the recommendation of the Magistrate Judge, he has not directly addressed the Report.² Nevertheless, out of an abundance of caution for a pro se Petitioner, the Court has conducted a de novo review of the record, the Report, and the applicable law. Upon such review, the Court agrees with the recommendation of the Magistrate Judge that the motion should be denied.

CONCLUSION

Accordingly, the motion to dismiss and, in the alternative, to reduce sentence due to saving an officer's life [18] is **DENIED**. Respondent's Motion to Dismiss [25] and Petitioner's motion to transfer [40] remain pending.³

IT IS SO ORDERED.

² To the extent Petitioner intended file this document as a stand-alone motion, it remains pending and referred to the Magistrate Judge.

³ The Court notes that Petitioner filed a Reply to the Motion for Successive Transfer, which will be addressed by a separate text order.

s/ Donald C. Coggins, Jr.
United States District Judge

August 21, 2023
Spartanburg, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.